

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

March 17, 2011

Lyle W. Cayce
Clerk

No. 10-30103
Summary Calendar

LAWRENCE W. FITZGERALD, JR.

Plaintiff-Appellant

v.

MERCK AND COMPANY, INCORPORATED

Defendant-Appellee

Appeal from the United States District Court
for the Eastern District of Louisiana
(05-CV-6618)

Before DAVIS, SMITH, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

This is Lawrence W. Fitzgerald, Jr.'s second appeal to this court. In his first appeal, this court denied his motion for leave to proceed in forma pauperis on appeal and dismissed his appeal as frivolous. At that point, the district court had denied his motion to proceed IFP in the district court and stated that his case was closed.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 10-30103

This appeal is arguably from the district court's denial of Fitzgerald's motion to file an amended complaint in the district court and of his subsequent motion to amend/ correct the judgment. In its order on the motion to amend the district court reiterated that there was no open case in which the amendment can be filed. Accordingly, nothing has happened in the interim since the last appeal to merit a different result in this appeal.

In addition, Fitzgerald has filed a motion seeking a limited remand to the district court (1) to have all filing fees either applied to a new claim against Merck or returned to him, and (2) to have the Special Administrator appointed to review his medical records and appoint him as a party to the current Vioxx Settlement case in process. The motion also requests that this court place this case on Tolled Status pending action by the district court on the limited remand. Fitzgerald cites no legal authority to support his right to such relief and we can discern none.

Accordingly, we affirm the judgment of the district court and deny Fitzgerald's motions.

AFFIRMED; MOTION DENIED.